

FIRST REGULAR SESSION

SENATE BILL NO. 621

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 28, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2455S.01I

AN ACT

To repeal sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 633.185, and 633.190, RSMo, and to enact in lieu thereof eight new sections relating to the division of mental retardation and developmental disabilities, for the sole purpose of changing the name of the division.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 2 633.185, and 633.190, RSMo, are repealed and eight new sections enacted in lieu 3 thereof, to be known as sections 630.003, 630.635, 633.005, 633.010, 633.029, 4 633.180, 633.185, and 633.190, to read as follows:

630.003. 1. There is hereby created a department of mental health to be 2 headed by a mental health commission who shall appoint a director, by and with 3 the advice and consent of the senate. The director shall be the administrative 4 head of the department and shall serve at the pleasure of the commission and be 5 compensated as provided by law for the director, division of mental health. All 6 employees of the department shall be selected in accordance with chapter 36, 7 RSMo.

8 2. (1) The "State Mental Health Commission", composed of seven 9 members, is the successor to the former state mental health commission and it 10 has all the powers, duties and responsibilities of the former commission. All 11 members of the commission shall be appointed by the governor, by and with the 12 advice and consent of the senate. None of the members shall otherwise be 13 employed by the state of Missouri.

14 (2) Three of the commission members first appointed shall be appointed 15 for terms of four years, and two shall be appointed for terms of three years, and 16 two shall be appointed for a term of two years. The governor shall designate, at

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 the time the appointments are made, the length of the term of each member so
18 appointed. Thereafter all terms shall be for four years.

19 (3) At least two of the members of the commission shall be physicians, one
20 of whom shall be recognized as an expert in the field of the treatment of nervous
21 and mental diseases, and one of whom shall be recognized as an expert in the
22 field of mental retardation or of other developmental disabilities. At least two of
23 the members of the commission shall be representative of persons or groups who
24 are consumers having substantial interest in the services provided by the
25 division, one of whom shall represent the mentally retarded or developmentally
26 disabled and one of whom shall represent those persons being treated for nervous
27 and mental diseases. Of the other three members at least one must be recognized
28 for his **or her** expertise in general business management procedures, and two
29 shall be recognized for their interest and expertise in dealing with alcohol/drug
30 abuse problems, or community mental health services.

31 3. The provisions of sections 191.120, 191.125, 191.130, 191.140, 191.150,
32 191.160, 191.170, 191.180, 191.190, 191.200, 191.210, RSMo, and others as they
33 relate to the division of mental health not previously reassigned by executive
34 reorganization plan number 2 of 1973 as submitted by the governor under chapter
35 26, RSMo, are transferred by specific type transfer from the department of public
36 health and welfare to the department of mental health. The division of mental
37 health, department of health and welfare, chapter 202, RSMo, and others are
38 abolished and all powers, duties and functions now assigned by law to the
39 division, the director of the divisions of mental health or any of the institutions
40 or officials of the division are transferred by type I transfer to the department of
41 mental health.

42 4. The Missouri institute of psychiatry, which is under the board of
43 curators of the University of Missouri is hereafter to be known as the "Missouri
44 Institute of Mental Health". The purpose of the institute will be that of
45 conducting research into improving services for persons served by the department
46 of mental health for fostering the training of psychiatric residents in public
47 psychiatry and for fostering excellence in mental health services through
48 employee training and the study of mental health policy and ethics. To assist in
49 this training, hospitals operated by and providers contracting with the
50 department of mental health may be used for the same purposes and under the
51 same arrangements as the board of curators of the University of Missouri utilizes
52 with other hospitals in the state in supervising residency training for medical

53 doctors. Appropriations requests for the Missouri institute of mental health shall
54 be jointly developed by the University of Missouri and the department of mental
55 health. All appropriations for the Missouri institute of mental health shall be
56 made to the curators of the University of Missouri but shall be submitted
57 separately from the appropriations of the curators of the University of Missouri.

58 5. There is hereby established within the department of mental health a
59 division of [mental retardation and] developmental disabilities. The director of
60 the division shall be appointed by the director of the department. The division
61 shall administer all state facilities under the direction and authority of the
62 department director. The Marshall Habilitation Center, the Higginsville
63 Habilitation Center, the Bellefontaine Habilitation Center, the Nevada
64 Habilitation Center, the St. Louis Developmental Disabilities Treatment Centers,
65 and the regional centers located at Albany, Columbia, Hannibal, Joplin, Kansas
66 City, Kirksville, Poplar Bluff, Rolla, St. Louis, Sikeston and Springfield and other
67 similar facilities as may be established, are transferred by type I transfer to the
68 division of [mental retardation and] developmental disabilities.

69 6. All the duties, powers and functions of the advisory council on mental
70 retardation and community health centers, sections 202.664 to 202.666, RSMo,
71 are hereby transferred by type I transfer to the division of [mental retardation
72 and] developmental disabilities of the department of mental health. The advisory
73 council on mental retardation and community health centers shall be appointed
74 by the division director.

75 7. The advisory council on mental retardation and developmental
76 disabilities heretofore established by executive order and all of the duties, powers
77 and functions of the advisory council including the responsibilities of the
78 provision of the council in regard to the Federal Development Disabilities Law
79 (P.L. 91-517) and all amendments thereto are transferred by type I transfer to the
80 division of [mental retardation and] developmental disabilities. The advisory
81 council on mental retardation and developmental disabilities shall be appointed
82 by the director of the division of [mental retardation and] developmental
83 disabilities.

84 8. The advisory council on alcoholism and drug abuse, chapter 202, RSMo,
85 is transferred by type II transfer to the department of mental health and the
86 members of the advisory council shall be appointed by the mental health director.

630.635. 1. If a resident in a mental retardation facility, or [his] **the**
2 **resident's** parent if he **or she** is a minor, or his **or her** legal guardian refuses

3 to consent to the proposed placement, the head of the mental retardation facility
4 may petition, under the procedures in section 633.135, RSMo, the director of the
5 division of [mental retardation and] developmental disabilities to determine
6 whether the proposed placement is appropriate under chapter 633, RSMo.

7 2. If a patient in a mental health facility, or [his] **the patient's** parent
8 if he **or she** is a minor, or his **or her** legal guardian refuses to consent to the
9 proposed placement, the head of the mental health facility may petition the
10 director of the division of comprehensive psychiatric services to determine
11 whether the proposed placement is appropriate under sections 630.610, 630.615
12 and 630.620.

13 3. The director of the division of comprehensive psychiatric services shall
14 refer the petition to the chairman of the state advisory council for his division
15 who shall appoint and convene a review panel composed of three members. At
16 least one member of the panel shall be a family member or guardian of a patient
17 who resides in a mental health facility operated by the department. The
18 remaining members of the panel shall be persons who are from nongovernmental
19 organizations or groups concerned with the prevention of mental disorders,
20 evaluation, care, treatment or rehabilitation of persons affected by the same
21 conditions as the patient the department seeks to place and who are familiar with
22 services and service needs of persons in mental health facilities operated by the
23 department. No member of the panel shall be an officer or employee of the
24 department.

25 4. After prompt notice and hearing, the panel shall determine whether the
26 proposed placement is appropriate under sections 630.610, 630.615 and
27 630.620. The hearing shall be electronically recorded for purposes of obtaining
28 a transcript. The council shall forward the tape recording, recommended findings
29 of fact, conclusions of law, and decision to the director who shall enter findings
30 of fact, conclusions of law, and the final decision. Notice of the director's decision
31 shall be sent to the patient, or [his] **the patient's** parent if he **or she** is a minor,
32 or his **or her** guardian by registered mail, return receipt requested. The director
33 shall expedite this review in all respects.

34 5. If the patient, or [his] **the patient's** parent if he **or she** is a minor,
35 or his **or her** guardian disagrees with the decision of the director, he **or she** may
36 appeal the decision, within thirty days after notice of the decision is sent, to the
37 circuit court of the county where the patient or resident, or [his] **the patient's**
38 **or resident's** parent if he **or she** is a minor, or his **or her** guardian

39 resides. The court shall review the record, proceedings and decision of the
40 director not only under the provisions of chapter 536, RSMo, but also as to
41 whether or not the head of the facility or the department sustained its burden of
42 proof that the proposed placement is appropriate under sections 630.110, 630.115
43 and 630.120. The court shall expedite this review in all
44 respects. Notwithstanding the provisions of section 536.140, RSMo, a court may,
45 for good cause shown, hear and consider additional competent and material
46 evidence.

47 6. The notice and procedure for the hearing by the panel shall be in
48 accordance with chapter 536, RSMo.

49 7. In all proceedings either before the panel or before the circuit court, the
50 burden of proof shall be upon the head of the facility to demonstrate by a
51 preponderance of evidence that the proposed placement is appropriate under the
52 criteria set forth in sections 630.610, 630.615 and 630.120.

53 8. Pending the convening of the hearing panel and the final decision of the
54 director or the court if the director's decision is appealed, the department shall
55 not place or discharge the patient from a facility except that the department may
56 temporarily transfer such patient in the case of a medical emergency.

57 9. There shall be no retaliation against any state employee as the result
58 of a good faith decision to place the patient which is appealed and who testifies
59 during a hearing or otherwise provides information or evidence in regard to a
60 proposed placement.

633.005. As used in this chapter, unless the context clearly requires
2 otherwise, the following terms shall mean:

3 (1) "Comprehensive evaluation", a study, including a sequence of
4 observations and examinations, of an individual leading to conclusions and
5 recommendations formulated jointly by an interdisciplinary team of persons with
6 special training and experience in the diagnosis and habilitation of the mentally
7 retarded and developmentally disabled;

8 (2) "Division", the division of [mental retardation and] developmental
9 disabilities of the department of mental health;

10 (3) "Division director", the director of the division of [mental retardation
11 and] developmental disabilities of the department of mental health, or his
12 designee;

13 (4) "Mental retardation facility", a private or department facility, other
14 than a regional center, which admits persons who are mentally retarded or

15 developmentally disabled for residential habilitation and other services and which
16 is qualified or licensed as such by the department pursuant to chapter 630,
17 RSMo. Such terms shall include, but shall not be limited to, habilitation centers
18 and private or public residential facilities for persons who are developmentally
19 disabled;

20 (5) "Regional center", an entity so designated by the department to
21 provide, directly or indirectly, for comprehensive mental retardation and
22 developmental disability services under this chapter in a particular region;

23 (6) "Respite care", temporary and short-term residential care, sustenance
24 and supervision of a mentally retarded or developmentally disabled person who
25 otherwise resides in a family home;

26 (7) "State advisory council", the Missouri advisory council on mental
27 retardation and developmental disabilities as created in section 633.020.

633.010. 1. The division of [mental retardation and] developmental
2 disabilities[, created by the omnibus reorganization act of 1974, section 9,
3 appendix B, RSMo,] shall be a division of the department. The division shall
4 have the responsibility of insuring that mental retardation and developmental
5 disabilities prevention, evaluation, care, habilitation and rehabilitation services
6 are accessible, wherever possible. The division shall have and exercise
7 supervision of division residential facilities, day programs and other specialized
8 services operated by the department, and oversight over facilities, programs and
9 services funded or licensed by the department.

10 2. The powers, functions and duties of the division shall include the
11 following:

12 (1) Provision of funds for the planning and implementation of accessible
13 programs to serve persons affected by mental retardation or developmental
14 disabilities;

15 (2) Review of mental retardation and developmental disabilities plans
16 submitted to receive state and federal funds allocated by the department;

17 (3) Provision of technical assistance and training to community-based
18 programs to assist in the planning and implementation of quality services;

19 (4) Assurance of program quality in compliance with such appropriate
20 standards as may be established by the department;

21 (5) Sponsorship and encouragement of research into the causes, effects,
22 prevention, habilitation and rehabilitation of mental retardation and
23 developmental disabilities;

24 (6) Provision of public information relating to mental retardation and
25 developmental disabilities and their habilitation;

26 (7) Cooperation with nonstate governmental agencies and the private
27 sector in establishing, conducting, integrating and coordinating mental
28 retardation and developmental disabilities programs and projects;

29 (8) Cooperation with other state agencies to encourage appropriate health
30 facilities to serve, without discrimination, persons who are mentally retarded or
31 developmentally disabled who require medical care and to provide them with
32 adequate and appropriate services;

33 (9) Participation in developing and implementing a statewide plan to
34 alleviate problems relating to mental retardation and developmental disabilities
35 and to overcome the barriers to their solutions;

36 (10) Encouragement of coordination of division services with other
37 divisions of the department and other state agencies;

38 (11) Encouragement of the utilization, support, assistance and dedication
39 of volunteers to assist persons affected by mental retardation and developmental
40 disabilities to be accepted and integrated into normal community activities;

41 (12) Evaluation, or the requirement of the evaluation, including the
42 collection of appropriate necessary information, of mental retardation or
43 developmental disabilities programs to determine their cost-and-benefit
44 effectiveness;

45 (13) Participation in developing standards for residential facilities, day
46 programs and specialized services operated, funded or licensed by the department
47 for persons affected by mental retardation or developmental disabilities.

633.029. All persons determined eligible for services provided by the
2 division of [mental retardation and] developmental disabilities prior to January
3 1, 1991, shall be eligible for services on the basis of their earlier determination
4 of eligibility without regard to their eligibility status under the definition of
5 developmental disability contained in section 630.005, RSMo.

6 633.180. 1. A family with an annual income of sixty thousand dollars or
7 less which has a child with a developmental disability residing in the family
8 home shall be eligible to apply for a cash stipend from the division of [mental
9 retardation and] developmental disabilities in an amount to be determined by the
10 regional advisory council. Such cash stipend amount shall not exceed the
11 maximum monthly federal Supplemental Security Income payment for an
12 individual with a developmental disability who resides alone. Such stipend shall

13 be paid on a monthly basis and shall be considered a benefit and not income to
14 the family. The stipend shall be used to purchase goods and services for the
15 benefit of the family member with a developmental disability. Such goods and
16 services may include, but are not limited to:

- 17 (1) Respite care;
- 18 (2) Personal and attendant care;
- 19 (3) Architectural and vehicular modifications;
- 20 (4) Health- and mental health-related costs not otherwise covered;
- 21 (5) Equipment and supplies;
- 22 (6) Specialized nutrition and clothing;
- 23 (7) Homemaker services;
- 24 (8) Transportation;
- 25 (9) Integrated community activities;
- 26 (10) Training and technical assistance; and
- 27 (11) Individual, family and group counseling.

28 2. Application for such stipend shall be made to the appropriate regional
29 center. The regional center shall determine the eligibility of the individual to
30 receive services from the division and the division shall forward the application
31 to the regional advisory council to determine the amount of the stipend which
32 may be approved by the council.

33 3. The family support program shall be funded by moneys appropriated
34 by the general assembly; however, the family support program shall not supplant
35 other programs funded through the division of [mental retardation and]
36 developmental disabilities.

633.185. 1. The division of [mental retardation and] developmental
2 disabilities, subject to appropriation by the general assembly, is authorized to
3 implement and administer, as part of the family support program, a family
4 support loan program, which shall provide a family with an annual income of
5 sixty thousand dollars or less which has an individual with a developmental
6 disability residing in the home, with low-interest, short-term loans to purchase
7 goods and services for the family member with a developmental disability.

8 2. Interest rates on loans made pursuant to the provisions of this section
9 shall be no more than one percent above the prime interest rate as determined
10 by the federal reserve system on the date the loan is approved. Loans may be for
11 a maximum period of sixty months and the outstanding loan amount to any
12 family may be no more than ten thousand dollars.

13 3. Applications for loans shall be made to the appropriate regional
14 center. The regional center shall determine the eligibility of the individual to
15 receive services from the division and the division shall forward the application
16 to the regional advisory council to determine the amount of the loan which may
17 be approved by the council.

18 4. There is hereby created in the state treasury for use by the department
19 of mental health a fund to be known as the "Family Support Loan Program
20 Fund". Moneys deposited in the fund shall be appropriated to the director of the
21 department of mental health to be used for loans pursuant to this section. The
22 fund shall consist of moneys appropriated by the general assembly for starting
23 the fund and money otherwise deposited according to law. Any unexpended
24 balance in the fund at the end of any biennium, not to exceed twice the annual
25 loans made pursuant to this act in the previous fiscal year, is exempt from the
26 provisions of section 33.080, RSMo, relating to the transfer of unexpended
27 balances to the ordinary revenue fund.

 633.190. 1. The division of [mental retardation and] developmental
2 disabilities, in cooperation with the Missouri planning council for developmental
3 disabilities, shall adopt policies and procedures and, when necessary, shall
4 promulgate rules and regulations regarding:

- 5 (1) Program guidelines and specifications;
- 6 (2) Additional duties of the regional advisory councils;
- 7 (3) Annual evaluation of services provided by each regional center,
8 including an assessment of consumer satisfaction;
- 9 (4) Coordination of the family support program and the use of its funds
10 throughout the state and within each region, with other publicly funded
11 programs, including Medicaid;
- 12 (5) Methodology for allocating resources to families with the funds
13 available;
- 14 (6) Resolution of grievances filed by families pertaining to actions of the
15 family support program;
- 16 (7) Methodology for outreach and education.

17 2. No rule or portion of a rule promulgated under the authority of this
18 chapter shall become effective unless it has been promulgated pursuant to the
19 provisions of [section 536.024] **chapter 536**, RSMo.